No. 86-1664

Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1986

ROBERT C. HERZFELD, et al.

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

ELIZABETH EKEN, et. al.

Respondents.

BRIEF IN OPPOSITION TO WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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Patrick C. English, Esq.
On The Brief

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PARTIES

Though not indicated in the caption of the petition, Elizabeth Eken, et. al., as representatives of the Class of Investors defrauded by Trenton H. Parker and International Mining Exchange, Inc., were appellees before the United States Court of Appeals for the Tenth Circuit and are proper parties-respondents herein.

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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1986

No. 86-1664

ROBERT C. HERZFELD, in his individual and custodial capacity; MARSHALL BERNES, TEARS McFARLAND, LTD., a Colorado Limited Partnership; CROKE-PATTERSON-CAMPBELL MANSION, LTD., a Colorado Limited Partnership; MALO MANSION, LTD., a Colorado Limited Partnership; and K.A.I. CASIMALLY,

Petitioners,

v

UNITED STATES OF AMERICA,

Respondent.

ELIZABETH EKEN, et. al.

Respondents.

BRIEF IN OPPOSITION TO
WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE
TENTH CIRCUIT

STATEMENT OF THE CASE

It should be noted that facts as recited in the petition were in sharp dispute at the trial level. However, the District Court and the Tenth Circuit both accepted petitioners' version of the facts for the purposes of the motion only. In the event of reversal there would be a remand for a hearing to determine the facts.

It should be noted that petitioners claims arise solely from judgments against Trenton H. Parker, individually, and not from judgments against International Mining Exchange, Inc.

It should also be noted that Trenton H. Parker was not the

sole defendant in the criminal case in which the restitutitionary fund was created. Also on trial and an integral part of the plea agreement was the International Mining Exchange, Inc. ("I.M.E."). The plea agreement provides that "Both defendants" will immediately turn over to the custody of a court appointed receiver the remaining proceeds of the scheme to defraud [which was the subject of the indictment]. (emphasis added) See Pa 45-48. (Exhibit E).

REASONS TO DENY THE PETITION

Petitioners Had No Judgment Against International Mining Exchange, Inc.

Since a party to the agreement resulting in the

restitutionary scheme and since petitioners' claims are not based upon any judgment against I.M.E., it was eminently within the discretion of the District Court to limit its restitutionary orders to those individuals defrauded by both Trenton H. Parker and International Mining Exchange, Inc. Indeed, there would appear to be no authority under 18 U.S.C. §3651 to do otherwise since restitution could only be ordered to the "aggrieved party for actual damages or loss caused by the offense for which conviction was had."

This might be a different case if Trenton H. Parker had been the only defendant in the criminal case from which the restitutionary scheme was created. If Mr. Parker

had been the sole criminal defendant then the allegation that one group of creditors was being favored over another might be properly raised. However, this is simply not the factual situation.

Petitioners have failed to show that the decisions below are in conflict with those of other circuits, or conflict with a state court of last resort, or that any important question of federal law is involved. Certainly no conflict has been alleged to exist with regard to any decision of this Court. See, Rule 17.

It is respectfully submitted that the Petition for Writ of Certiorari in this matter should therefore be denied.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit be denied.

Respectfully submitted,

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